

AMENDED IN SENATE APRIL 21, 2014

SENATE BILL

No. 1262

Introduced by Senator Correa

February 21, 2014

An act to add Article 25 (commencing with Section 2525) to Chapter 5 of Division 2 of the Business and Professions Code, and to add Article 7 (commencing with Section 111657) to Chapter 6 of Part 5 of Division 104 of the Health and Safety Code, relating to medical marijuana.

LEGISLATIVE COUNSEL'S DIGEST

SB 1262, as amended, Correa. Medical marijuana: regulation of physicians, dispensaries, and cultivation sites.

(1) Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 6, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law enacted by the Legislature requires the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use marijuana for medical purposes, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use.

This bill would require the State Department of Public Health to license dispensing facilities and cultivation sites that provide, process, and grow marijuana for medical use, as specified, and would make these licenses subject to the restrictions of the local jurisdiction in which the facility operates or proposes to operate. The bill would require the department to establish standards for quality assurance testing of medical marijuana and would prohibit the use of nonorganic pesticides in any marijuana cultivation site. The bill would require licensed dispensing facilities and licensed cultivation sites to implement sufficient security

measures to both deter and prevent unauthorized entrance into areas containing marijuana and theft of marijuana at those facilities, including establishing limited access areas accessible only to authorized facility personnel, and would require these facilities to notify appropriate law enforcement authorities within 24 hours after discovering specified breaches in security. *The bill would require licensed dispensing facilities to verify that the recommending physician and surgeon is licensed to practice medicine in California before providing a marijuana product to a patient. This bill would prohibit the distribution of any form of advertising for physician recommendations for medical marijuana unless the advertisement bears a specified notice and requires that the advertisement meet specified requirements and not be fraudulent, deceitful, or misleading, as specified.* The bill would make enforcement of these provisions the responsibility of the county health departments, with oversight by the department. Violation of these provisions would be punishable by a civil fine of up to \$35,000 for each individual violation. By expanding the duties of local health officers, this bill would impose a state-mandated local program.

(2) Existing law, the Medical Practice Act, provides for licensure and regulation of physicians and surgeons by the Medical Board of California.

This bill would establish requirements for a physician and surgeon to recommend medical marijuana, including prescribed procedural and recordkeeping requirements, and would require a recommendation for medical marijuana for a ~~minor person under 21 years of age~~ to include a specific justification for the recommendation and why the benefit of use is more important than the possible neurological damage that could be caused by the ~~minor person~~ using marijuana and to be approved by a board certified pediatrician. ~~The bill would require a physician and surgeon that recommends medical marijuana to report to the board the number of recommendations issued, with supporting documentation on patient medical need.~~

~~This bill would require the board to audit a physician and surgeon who recommends medical marijuana more than 100 times in a year to ensure compliance with existing law and would require the board to establish a certification process for physicians who wish to issue medical marijuana recommendations, including a mandatory training in identifying signs of addiction and ongoing substance abuse.~~

This bill would require the board, by January 1, 2016, to convene a task force of experts in the use of medical marijuana to review and

update, as necessary, guidelines for recommending medical marijuana, as specified.

Violation of these provisions would be punishable by a civil fine not to exceed \$5,000. *The bill would make the recommendation of medical marijuana without a prior examination and medical indication and recommendation of medical marijuana for nonmedical purposes unprofessional conduct, to be punished as provided. The bill would also make it a misdemeanor for a physician and surgeon who recommends marijuana to a patient for a medical purpose to accept, solicit, or offer any remuneration from or to a licensed dispensing facility in which the physician and surgeon or his or her immediate family has a financial interest. By creating a new crime, this bill would impose a state-mandated local program.*

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The California Constitution grants cities and counties the
- 4 authority to make and enforce, within their borders, “all local
- 5 police, sanitary, and other ordinances and regulations not in conflict

1 with the general laws.” This inherent local police power includes
2 broad authority to determine, for purposes of public health, safety,
3 and welfare, the appropriate uses of land within the local
4 jurisdiction’s borders. The police power, therefore, allows each
5 city and county to determine whether or not a medical marijuana
6 dispensary or other facility that makes medical marijuana available
7 may operate within its borders. This authority has been upheld by
8 *City of Riverside v. Inland Empire Patients Health & Wellness,*
9 *Inc.* (2013) 56 Cal.4th 729 and *County of Los Angeles v. Hill*
10 (2011) 192 Cal.App.4th 861.

11 (b) If, pursuant to this authority, a city or county determines
12 that a dispensary or other facility that makes medical marijuana
13 available may operate within its borders, then there is a need for
14 the state to license these dispensaries and other facilities for the
15 purpose of adopting and enforcing protocols for training and
16 certification of physicians who recommend the use of medical
17 marijuana and for agricultural cultivation practices. This licensing
18 requirement is not intended in any way nor shall it be construed
19 to preempt local ordinances regarding the sale and use of medical
20 marijuana, including, but not limited to, security, signage, lighting,
21 and inspections.

22 ~~(e) Given that the current system of all-cash transactions within~~
23 ~~the medical marijuana industry is unsustainable in the long term,~~
24 ~~there is a need to provide a monetary structure, as an alternative~~
25 ~~to the federal banking system, for the operation, regulation, and~~
26 ~~taxation of medical marijuana dispensaries.~~

27 ~~(d)~~

28 (c) All of the following elements are necessary to uphold
29 important state goals:

30 (1) Strict provisions to prevent the potential diversion of
31 marijuana for recreational use.

32 (2) Audits to accurately track the volume of both product
33 movement and sales.

34 (3) An effective means of restricting access to medical marijuana
35 ~~by minors, persons under 21 years of age given the medical studies~~
36 ~~documenting marijuana’s harmful and permanent effects on the~~
37 ~~brain development of youth.~~

38 ~~(4) Stricter provisions relating to physicians and their~~
39 ~~recommendation procedures in order to address widespread~~
40 ~~problems of questionable medical marijuana recommendations by~~

1 ~~physicians without a bona fide doctor-patient relationship with~~
2 ~~the person to whom they are issuing the recommendation.~~

3 (e)

4 (d) Nothing in this act shall be construed to promote or facilitate
5 the nonmedical, recreational possession, sale, or use of marijuana.

6 SEC. 2. Article 25 (commencing with Section 2525) is added
7 to Chapter 5 of Division 2 of the Business and Professions Code,
8 to read:

10 Article 25. Recommending Medical Marijuana

11
12 2525. (a) Prior to recommending marijuana to a patient
13 pursuant to Article 2.5 (commencing with Section 11362.7) of
14 Chapter 6 of Division 10 of the Health and Safety Code, a
15 physician and surgeon shall meet all of the following requirements:

16 (1) ~~Have a bona fide doctor-patient relationship, with medical~~
17 ~~marijuana recommendations to be made by a patient's primary~~
18 ~~care physician or by a physician and surgeon to whom the patient~~
19 ~~is referred by their primary care physician relationship.~~

20 (2) ~~Conduct an in-person appropriate prior examination of the~~
21 ~~patient to establish the patient's need for medical marijuana that~~
22 ~~medical use of marijuana is appropriate.~~

23 (3) Consult with the patient as necessary and periodically review
24 the treatment's efficacy.

25 (b) A physician and surgeon that recommends medical marijuana
26 shall do all of the following:

27 (1) ~~Address, in the recommendation, the quantity of use and~~
28 ~~method of delivery, including~~ *Include* a discussion of side effects.
29 ~~If the recommended method of delivery is smoking, the~~
30 ~~recommendation shall state the reasons for selecting this method~~
31 ~~of delivery in the context of health issues created by smoking.~~

32 (2) Address, in the recommendation, what kind of marijuana to
33 obtain, including high tetrahydrocannabinol (THC) levels, low
34 THC levels, high cannabidiol (CBD) levels, low CBD levels, and
35 explain the reason for recommending the particular strain. Under
36 no circumstances shall a physician and surgeon recommend butane
37 hash oil.

38 (3) Maintain a system of recordkeeping that supports the
39 decision to recommend the use of medical marijuana for individual
40 patients.

1 (c) A recommendation for medical marijuana provided to a
2 ~~minor person under 21 years of age shall include a specific~~
3 ~~justification for the recommendation and why the benefit of use~~
4 ~~is more important than the possible neurological damage that could~~
5 ~~be caused by the minor using marijuana. A recommendation for~~
6 ~~a minor shall be approved by a board certified pediatrician. A~~
7 ~~recommendation for a minor person under 21 years of age shall~~
8 ~~be for high CBD marijuana and all recommendations for minors~~
9 ~~must persons under 21 years of age shall be for nonsmoking~~
10 ~~delivery.~~

11 ~~2525.1. (a) A physician and surgeon who recommends medical~~
12 ~~marijuana shall report to the California Medical Board the number~~
13 ~~of recommendations issued, with supporting documentation on~~
14 ~~patient medical need. The board shall forward these reports to the~~
15 ~~State Department of Public Health.~~

16 ~~(b) A physician and surgeon who makes more than 100~~
17 ~~recommendations in a calendar year shall be audited by the~~
18 ~~California Medical Board to determine compliance with Article~~
19 ~~2.5 (commencing with Section 11362.7) of Chapter 6 of Division~~
20 ~~10 of the Health and Safety Code.~~

21 ~~2525.2. The California Medical Board shall establish a~~
22 ~~certification process for physicians who wish to issue medical~~
23 ~~marijuana recommendations, including a mandatory training in~~
24 ~~identifying signs of addiction and ongoing substance abuse.~~

25 ~~2525.1. (a) It is unlawful for a physician and surgeon who~~
26 ~~recommends marijuana to a patient for a medical purpose to~~
27 ~~accept, solicit, or offer any form of remuneration from or to a~~
28 ~~facility licensed pursuant to Article 7 (commencing with Section~~
29 ~~111657) of Chapter 6 of Part 5 of Division 104 of the Health and~~
30 ~~Safety Code if the physician and surgeon or his or her immediate~~
31 ~~family have a financial interest in that facility.~~

32 ~~(b) For the purposes of this section, "financial interest" shall~~
33 ~~have the same meaning as in Section 650.01.~~

34 ~~(c) A violation of this section shall be a misdemeanor.~~

35 ~~2525.2. The board, by January 1, 2016, shall convene a task~~
36 ~~force of experts in the use of medical marijuana to review and~~
37 ~~update, as necessary, guidelines for recommending medical~~
38 ~~marijuana to ensure competent review in cases concerning the~~
39 ~~recommendation of marijuana for medical purposes.~~

1 2525.3. (a) In addition to all other remedies available pursuant
2 to this chapter, violation of any provision of this article shall be
3 punishable by a civil fine of up to five thousand dollars (\$5,000).

4 (b) *Recommending marijuana to a patient for a medical purpose*
5 *without an appropriate prior examination and a medical indication,*
6 *or recommending marijuana for a nonmedical purpose shall*
7 *constitute unprofessional conduct and may be punished pursuant*
8 *to Article 12 (commencing with Section 2220).*

9 SEC. 3. Article 7 (commencing with Section 111657) is added
10 to Chapter 6 of Part 5 of Division 104 of the Health and Safety
11 Code, to read:

12
13 Article 7. Medical Marijuana
14

15 111657. For purposes of this article, the following definitions
16 shall apply:

17 (a) “Department” means the State Department of Public Health.

18 (b) “Licensed cultivation site” means a facility that grows or
19 grows and processes marijuana for medical use and that is licensed
20 pursuant to Section 111657.1.

21 (c) “Licensed dispensing facility” means a dispensary, mobile
22 dispensary, marijuana processing facility, or other facility that
23 provides marijuana for medical use that is licensed pursuant to
24 Section 111657.1.

25 111657.1. (a) Except as provided in Section 11362.5 of, and
26 Article 2.5 (commencing with Section 11362.7) of Chapter 6 of
27 Division 10 of, the Health and Safety Code, a person shall not sell
28 or provide marijuana other than at a licensed dispensing facility.

29 (b) Except as provided in Section 11362.5 of, and Article 2.5
30 (commencing with Section 11362.7) of Chapter 6 of Division 10
31 of, the Health and Safety Code, a person shall not grow or process
32 marijuana other than at a licensed cultivation site.

33 (c) The department shall require, prior to issuing a license to a
34 dispensing facility or a cultivation site, all of the following:

35 (1) The name of the owner or owners of the proposed facility.

36 (2) The address and telephone number of the proposed facility.

37 (3) A description of the scope of business of the proposed
38 facility.

39 (4) A certified copy of the local jurisdiction’s approval to operate
40 within its borders.

1 (5) A completed application, as required by the department.

2 (6) Payment of a fee, in an amount to be determined by the
3 department not to exceed the amount necessary, but that is
4 sufficient to cover, the actual costs of the administration of this
5 article.

6 (7) Any other information as required by the department.

7 111657.2. The department shall, after consulting with outside
8 entities as needed, establish standards for quality assurance testing
9 of medical marijuana, to ensure protection against microbiological
10 contaminants. Nonorganic pesticides shall not be used in any
11 marijuana cultivation site, irrespective of size or location.

12 111657.3. (a) A licensed dispensing facility shall not acquire,
13 possess, cultivate, deliver, transfer, transport, or dispense marijuana
14 for any purpose other than those authorized by Article 2.5
15 (commencing with Section 11362.7) of Chapter 6 of Division 10.

16 (b) A licensed dispensing facility shall not acquire marijuana
17 plants or products except through the cultivation of marijuana by
18 that facility, if the facility is a licensed cultivation site, or another
19 licensed cultivation site.

20 111657.4. *A licensed dispensing facility shall not provide a*
21 *marijuana product to a patient until it verifies that the*
22 *recommending physician and surgeon is licensed to practice*
23 *medicine in California.*

24 111657.5. (a) *A person shall not distribute any form of*
25 *advertising for physician recommendations for medical marijuana*
26 *in California unless the advertisement bears the following notice*
27 *to consumers:*

28
29 *NOTICE TO CONSUMERS: The Compassionate Use Act of*
30 *1996 ensures that seriously ill Californians have the right to obtain*
31 *and use marijuana for medical purposes where medical use is*
32 *deemed appropriate and has been recommended by a physician*
33 *who has determined that the person's health would benefit from*
34 *the use of marijuana. Physicians are licensed and regulated by*
35 *the Medical Board of California and arrive at the decision to make*
36 *this recommendation in accordance with accepted standards of*
37 *medical responsibility. California law prohibits advertising that*
38 *includes statements of bait, discount, premiums, gifts, or any*
39 *statements of a similar nature.*
40

1 ***(b) Advertising for physician recommendations for medical***
2 ***marijuana shall meet all requirements of Section 651 of the***
3 ***Business and Professions Code. Price advertising shall not be***
4 ***fraudulent, deceitful, or misleading, including statements or***
5 ***advertisements of bait, discount, premiums, gifts, or statements of***
6 ***a similar nature.***

7 ~~111657.4.~~

8 111657.6. (a) A facility licensed pursuant to this article shall
9 implement sufficient security measures to both deter and prevent
10 unauthorized entrance into areas containing marijuana and theft
11 of marijuana at those facilities. These security measures shall
12 include, but not be limited to, all of the following:

13 (1) Allow only registered qualifying patients, personal
14 caregivers, and facility agents access to the facility.

15 (2) Prevent individuals from remaining on the premises of the
16 facility if they are not engaging in activity expressly related to the
17 operations of the facility.

18 (3) Establish limited access areas accessible only to authorized
19 facility personnel.

20 (4) Store all finished marijuana in a secure, locked safe or vault
21 and in a manner as to prevent diversion, theft, and loss.

22 (b) A facility licensed pursuant to this article shall notify
23 appropriate law enforcement authorities within 24 hours after
24 discovering any of the following:

25 (1) Discrepancies identified during inventory.

26 (2) Diversion, theft, loss, or any criminal activity involving the
27 facility or a facility agent.

28 (3) The loss or unauthorized alteration of records related to
29 marijuana, registered qualifying patients, personal caregivers, or
30 facility agents.

31 (4) Any other breach of security.

32 (c) A licensed cultivation site shall weigh, inventory, and
33 account for on video, all medical marijuana to be transported prior
34 to its leaving its origination location. Within eight hours after
35 arrival at the destination, the licensed dispensing facility shall
36 re-weigh, re-inventory, and account for on video, all transported
37 marijuana.

~~111657.5.~~

111657.7. (a) Enforcement of this article shall be the responsibility of the county health departments, with oversight by the department.

(b) An enforcement officer may enter a facility licensed pursuant to this article during the facility's hours of operation and other reasonable times to do either of the following:

(1) Conduct inspections, issue citations, and secure samples, photographs, or other evidence from the facility, or a facility suspected of being a dispensing facility or cultivation site.

(2) Secure as evidence documents, or copies of documents, including inventories required pursuant to subdivision (c) of Section ~~111657.4~~ 111657.6, or any record, file, paper, process, invoice, video, or receipt for the purpose of determining compliance with this chapter.

(c) A written report shall be made and a copy shall be supplied or mailed to the owner of the facility at the completion of an inspection or investigation.

(d) Upon request by the department, local governments shall provide the department with reports on the number and types of facilities operating within their jurisdiction.

~~111657.6.~~

111657.8. In addition to the provisions of this article, a license granted pursuant to this article shall be subject to the restrictions of the local jurisdiction in which the facility operates or proposes to operate. Even if a license has been granted pursuant to this article, a facility shall not operate in a local jurisdiction that prohibits the establishment of that type of business.

~~111657.7.~~

111657.9. Violation of this provision shall be punishable by a civil fine of up to thirty-five thousand dollars (\$35,000) for each individual violation.

111657.10. *Nothing in this article shall prevent a city or other local governing body from doing any of the following:*

(a) *Adopting and enforcing local ordinances that regulate the location, operation, or establishment of medical marijuana cooperatives or collectives.*

(b) *The civil and criminal enforcement of local ordinances described in subdivision (a).*

(c) *Enacting other laws consistent with this article.*

1 ~~SEC. 4. If the Commission on State Mandates determines that~~
2 ~~this act contains costs mandated by the state, reimbursement to~~
3 ~~local agencies and school districts for those costs shall be made~~
4 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
5 ~~4 of Title 2 of the Government Code.~~

6 *SEC. 4. No reimbursement is required by this act pursuant to*
7 *Section 6 of Article XIII B of the California Constitution for certain*
8 *costs that may be incurred by a local agency or school district*
9 *because, in that regard, this act creates a new crime or infraction,*
10 *eliminates a crime or infraction, or changes the penalty for a crime*
11 *or infraction, within the meaning of Section 17556 of the*
12 *Government Code, or changes the definition of a crime within the*
13 *meaning of Section 6 of Article XIII B of the California*
14 *Constitution.*

15 *However, if the Commission on State Mandates determines that*
16 *this act contains other costs mandated by the state, reimbursement*
17 *to local agencies and school districts for those costs shall be made*
18 *pursuant to Part 7 (commencing with Section 17500) of Division*
19 *4 of Title 2 of the Government Code.*